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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/526,100	03/15/2000	Steven Sheppard	6019.3026	9168
27833	7590	06/16/2004	EXAMINER	
TECHNOLOGY, PATENTS AND LICENSING, INC.			CHUNG, JASON J	
6206 KELLERS CHURCH ROAD			ART UNIT	
PIPERSVILLE, PA 18947			PAPER NUMBER	

2611

DATE MAILED: 06/16/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/526,100

Applicant(s)

SHEPPARD ET AL.

Examiner

Jason J. Chung

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-45.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

Continuation of 2. NOTE: The applicant argues on page 15 of the response that the rejection under section 102 using the Martinez reference fails to anticipate the recited claims. The applicant argues on pages 15-16 of the response that Martinez does not have a bias switch that is connected to the optical receiver in response to a pulse train generated by the optical receiver since the AND gate is not a bias switch and turns on and off in response from the TDM slot selector, the oscillator is not connected to the bias switch and does not turn on and off in response to the AND gate, and the isolator is not a diplexer filter. The examiner respectfully disagrees with this assertion. Martinez discloses the IR module 24 (optical receiver) sends the optical signal to an AND gate 59 (bias switch) and the signal is sent to the modulator 65 and oscillator 63 (column 9, lines 8-20, figure 6); the combination of the modulator 65, oscillator 63, and crystal 61 reads on the claimed oscillator that modulates a signal to produce an RF signal. The AND gate receives pulse trains from the optical receiver 24 that are logic high "1's" and output the logic high to the modulator 65 (part of the claimed oscillator) and the modulator 65, oscillator 63, and crystal 61 responds to the logic high pulse train and convert the signal into an electrical signal, which meets the limitation on the bias switch and the oscillator coupled to the bias switch. The AND gate is connected to the optical receiver via the microprocessor. An AND gate will output a logic high '1' when all the inputs are logic high. Thus, the AND gate 59 switches on and off IN RESPONSE to the pulse train going that is initially input into the microprocessor and then output from the microprocessor. Both the oscillator 63 and the crystal 61 are connected to the oscillator via modulator 65. Thus, when the AND gate 59 outputs a logic high to the modulator, both the crystal and oscillator switch on and generate an RF carrier for the viewer response signal. Martinez discloses the viewer response message is applied to the modulator which in turn transmits that message on cable 7 via isolator 47 and coupler and both the oscillator 63 and crystal 61 generate the RF carrier for that viewer response (column 9, lines 13-20); the RF carrier being generated enables the isolator 47 and coupler to inject the RF signal onto the media and thus meets the limitation of the diplexer filter by performing the function of the stated diplexer filter. Claims 41 and 43, which depend on claim 39 are therefore not allowable as stated by the applicant.

The applicant argues on pages 16-18 of the response that the claims now recite a limitation from the dependent claim "in close proximity" and the previous rejection does not meet the limitation of "in close proximity". The examiner respectfully disagrees with this assertion. The limitation "in close proximity" is not given in relation of how close the residential gateway is to the television. Hamlin discloses system controller 38 (residential gateway) that has a signal transceiver 40 coupled to it that interacts with a remote controller 42 capable of being carried anywhere around the house (column 3, lines 13-23); as previously disclosed, Ehreth discloses receiving channel select commands from a remote control and Hamlin discloses receiving remote control commands directly at the residential gateway, which meets the limitation on the channel select command received by a receiver directly within the residential gateway. Hamlin discloses the remote controller 42 can interact directly with the system controller 38 (residential gateway) (column 5, lines 30-45) and the systems controller has various TVs and VCRs connected to it (column 5, lines 17-29). Hamlin discloses the remote control can control the different devices in various locations of the house (column 5, lines 46-60). Ehreth discloses a communications controller 30 (residential gateway) the television set 100 that is by itself, which meets the limitation on close in proximity and television sets located in remote site 104, which meets the limitation on televisions remotely located; each television has a channel selector and signaling unit 50 associated with it (column 2, line 59-column 3, line 10 and figure 1). Hamlin discloses the receiving units 46 can be TVs (column 5, lines 17-30; column 4, lines 27-33).

The applicant argues on page 18 of the response that the residential gateway (converter 34) may be located outside the house as stated in Hamlin (column 3, lines 8-9). However, the examiner would like to point out that this is an alternative embodiment and Hamlin discloses the converter 34 may be located inside or outside the house. Furthermore, the examiner uses the system controller 38 as the residential gateway (figure 1). Hamlin discloses the TVs 46 are in the same room as the system controller 38 (residential gateway), thus being in close proximity. Hamlin discloses the keypad 70 on the remote control 42 can be used to transmit signals via electromagnetic radiation such as infrared (optical) to the signal transceiver 40 coupled to the system controller 38 (residential gateway) (column 6, lines 8-17), which also meets the limitation on from an optical remote control device associated with a television located in close proximity to the residential gateway received directly by a receiver within the residential gateway.

The applicant argues on page 18 of the response that the teachings of Hamlin may not be used to modify Ehreth without destroying Ehreth. The examiner respectfully disagrees with this assertion. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Furthermore, the reference does not explicitly state that the modification may not be done.

The applicant argues on pages 18-21 of the response that independent claims 9 and 21 with the limitation "in close proximity" from the dependent claim and their presently dependent claims are not met under the previous rejection for the same reasoning as stated for claim 1. The examiner respectfully disagrees with this assertion and uses the same explanation as provided in independent claim 1 stated above by the examiner.

The applicant argues on pages 22-24 of the response that independent claims 30-31 with the limitation "in close proximity" from the dependent claim and their presently dependent claims are not met under the previous rejection for the same reasoning as stated for claim 1. The examiner respectfully disagrees with this assertion and uses the same explanation as provided in independent claim 1 stated above by the examiner.

The applicant argues on pages 21-27 of the response that the limitations in the dependent claims are not met under the previous rejection for being dependent on the independent claims since the independent claims are not properly rejected. The examiner respectfully disagrees with this assertion and states above why the independent claims limitations are met and therefore the dependent claims remain rejected under section 103.


VIVEK SRIVASTAVA
PRIMARY EXAMINER